

Docket No. 0020-5461PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Noriyuki SATO et al.

Patent No. 7,601,801

Confirmation No. 5447

Filed: January 10, 2006

Art Unit: 1643

For: HLA-A24 BINDING CANCER ANTIGEN
PEPTIDE DERIVED FROM LIVIN

Examiner: Huff, Sheela Jitendra

**REQUEST FOR RECONSIDERATION OF PATENT
TERM ADJUSTMENT UNDER 37 CFR § 1.705 (d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Patentee received the attached decision on the Request for Reconsideration of Patent Term Adjustment, filed on March 16, 2009 (Exhibit 1). The Request for Reconsideration was dismissed as premature. Therefore, the Patentee is now submitting a timely Request for Reconsideration of Patent Term Adjustment. Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the front page of U. S. Patent No. 7,601,801 B2 (Exhibit 2). Specifically, while U. S. Patent No. 7,601,801 indicates a patent term adjustment of 186 days, Patentee submits that the patent term adjustment should correctly be 373 days.

STATEMENT OF FACTS

1. The Issue Notification issued in this case on October 13, 2009 indicated that the Patent Term Adjustment to date was 183 days.

2. However, the PAIR system does not indicate any Patent Term Adjustment due to the USPTO failure to issue a patent within three (3) years (36 months) from the actual filing date of the application, January 10, 2006 (37 C.F.R. § 1.702(b)), which delay was 276 days.

3. In accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 468 days of prosecution delay, minus 95 days of Applicant delay, for a total of 373 days of Patent Term Adjustment.

4. On March 16, 2009, Patentee requested that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to **268 days**.

5. On September 15, 2009, the USPTO issued their **decision** upon Patentee's request of March 16, to the effect that the March 16, 2009 request was "premature" and indicating that the proper time to make a request for reconsideration of patent term adjustment was in the period within two months after issue of the patent.

6. On October 13, 2009, US Patent 7,601,801 issued.

7. The patent term adjustment indicated on the face of US Patent 7,601,801 is 186 days.

8. Accordingly, Patentee hereby renews their request Patentee requested that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to **373 days**.

**COMPLIANCE WITH REQUIREMENTS OF
37 CFR § 1.705 (b)(1) AND (2)**

9. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.

10. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).

11. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

CONCLUSION

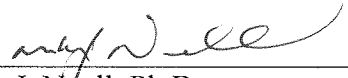
The USPTO is requested to correctly indicate that U.S. Patent 7,601,801 is entitled to 373 days of Patent term Adjustment.

PAYMENT OF FEES

Applicant notes that the \$200.00 fee set forth in 37 C.F.R. § 1.18(e) for consideration of the application for patent term adjustment under 1.705(d) was submitted on March 5, 2009. Accordingly, Applicant does not believe any fees are currently due. However, if necessary, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for consideration of this request as required by 37 C.F.R. 1.18(e).

Dated: December 14, 2009

Respectfully submitted,

By 
Mark J. Nuell, Ph.D.

Registration No. 36,623

BIRCH, STEWART, KOLASCH & BIRCH, LLP

12770 High Bluff Drive, Suite 260

San Diego, CA 92130

(858) 792-8855

Attorney for Applicant

Attachments:

Exhibit 1 – Decision on Request for Reconsideration

Exhibit 2 – Issue Notification